

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Randy W. Wilson

CASE 40A-0108-R-2022

40A 204287-00
40A 204288-00
40A 204289-00
40A 204290-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claims 40A 204287-00, 40A 204288-00, 40A 204289-00, and 40A 204290-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup

(Basin 40A). These claims, except 40A 204290-00, received issue remarks. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. Each of these claims received an objection filed by Daniel Debuff.

The Court consolidated these claims into Water Court Case 40A-0108-R-2022 on April 4, 2022. The Court scheduled an initial status conference to determine how the parties would like to address the objections in the case. Objector Daniel Debuff did not appear. The Court subsequently dismissed Mr. Debuff from the case and dismissed the objections due to the failure to appear at a Court proceeding. The Court then referred Claimant to the Lewistown Regional Office of the DNRC for issue remark resolution. The DNRC filed a memorandum with recommendations on July 27, 2022.

The information discussed in this Report may be found on the Court’s Full Court Enterprise docketing system.

FINDINGS OF FACT

1. Claim 40A 204287-00 appeared with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE AND DITCH CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. Claim 40A 204288-00 appeared with the following issue remarks:

ON APRIL 29, 2011 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING THAT THE SECTION NUMBER IN THE POINT OF DIVERSION LEGAL DESCRIPTION IS INCORRECT, THAT IT SHOULD BE SECTION 33. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS.

IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

3. Claim 40A 204289-00 appeared with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE AND DITCH CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

4. The DNRC memorandum contains discussion of the issue remarks and information reviewed by the Lewistown Regional Office, USDA aerial photos, maps, and documents from the claim files.

5. The DNRC makes the following recommendations regarding Claim 40A 204287-00:

Recommendation:

Communication with the Claimants Randy Wilson resulted in verification of the headgate not existing. Evidence seen by the DNRC from the 1986 field visit supports the claim by Mr. Wilson that the headgate does not exist but has the correct Point of Diversion. Thus, if the Means of Diversion is changed from Headgate to Diversion Dam, then the DNRC recommends the removal of the P49 issue remark from water right 40A 204287-00. To add clarification to the water right on how the Diversion dam diverts water, the DNRC recommends that a D25 information remark be added which shows: THE MEANS OF DIVERSION IS A TARP or CANVAS.

6. Claim 40A 204287-00 should be modified as follows:

Means of Diversion: Diversion Dam

Add information remark stating: “The means of diversion is a tarp or canvas.”

7. Based on communication with Claimant and review of relevant maps, DNRC recommends Claim 40A 204288-00 be modified as follows:

Means of Diversion: Diversion Dam

Add information remark stating: “The means of diversion is a tarp or canvas.”

Point of Diversion: NWNWSW of Section 34, T9N, R20E.

Source Name: Unnamed Tributary of Merrills Springs Creek.

8. The point of diversion of Claim 40A 204288-00 was modified in a previous Master's Report. *See* Notice of Filing of Master's Report, Case 40A-105, Nov. 2, 1988.

9. DNRC employee Melissa Norris states in an April 28, 2011 memorandum to the Court that the point of diversion of Claim 40A 204288-00 is incorrect. Ms. Norris explains that the point of diversion was changed based on erroneous information and mislabeled section numbers. *See* 40A 204288-00 Claim File, Memorandum from Melissa Norris to Kathryn Lambert, April 28, 2011. Ms. Norris recommends changing the point of diversion to NENESE of Section 33, T9N, R20E. The Lewistown Regional Office's current recommendation to change the point of diversion to NWNWSW of Section 34 is based on Claimant contact and ArcGIS mapping technology. NWNWSW of Section 34, T9N, R20E is just across the section line from NENESE of Section 33, T9N, R20E.

10. Claim 40A 204288-00 should be modified as recommended by DNRC.

11. The DNRC makes the following recommendations regarding Claim 40A 204289-00:

Recommendation:

Communication with the Claimants Randy Wilson resulted in verification of the headgate not existing. Evidence seen by the DNRC from the 1986 field visit supports the claim by Mr. Wilson that the headgate does not exist but has the correct Point of Diversion. Thus, if the Means of Diversion is changed from Headgate to Diversion Dam, then the DNRC recommends the removal of the P49 issue remark from water right 40A 204289-00. To add clarification to the water right on how the Diversion dam diverts water, the DNRC recommends that a D25 information remark be added which shows: THE MEANS OF DIVERSION IS A TARP or CANVAS.

12. Claim 40A 204289-00 should be modified as follows:

Means of Diversion: Diversion Dam

Add information remark stating: "The means of diversion is a tarp or canvas."

13. The issue remarks should be removed from each relevant above-captioned claim.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a

preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of each relevant claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from each above-captioned claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Randy W. Wilson
322 Dracut Hill Rd
Vaughn, MT 59487

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

Water Right Number: 40A 204287-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RANDY W WILSON
322 DRACUT HILL RD
VAUGHN, MT 59487

Priority Date: JULY 7, 1908

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 114.00 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 6.70

***Source Name:** MERRILLS SPRINGS CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNW	2	8N	20E	GOLDEN VALLEY

Period of Diversion: MARCH 1 TO OCTOBER 1

Diversion Means: DIVERSION DAM

THE MEANS OF DIVERSION IS A TARP OR CANVAS.

Period of Use: MARCH 1 TO OCTOBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	6.70		W2SWNW	2	8N	20E	GOLDEN VALLEY
Total:	6.70						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

Water Right Number: 40A 204288-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: RANDY W WILSON
322 DRACUT HILL RD
VAUGHN, MT 59487

Priority Date: JUNE 6, 1911

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 187.00 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 11.00

Source Name: UNNAMED TRIBUTARY OF MERRILLS SPRINGS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWSW	34	9N	20E	GOLDEN VALLEY

Period of Diversion: MARCH 1 TO OCTOBER 1

Diversion Means: DIVERSION DAM

THE MEANS OF DIVERSION IS A TARP OR CANVAS.

Period of Use: MARCH 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	7.10		SESWSW	34	9N	20E	GOLDEN VALLEY
2	1.80		SWSESW	34	9N	20E	GOLDEN VALLEY
3	2.10		SWSWSW	34	9N	20E	GOLDEN VALLEY
Total:	<u>11.00</u>						

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 204289-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RANDY W WILSON
322 DRACUT HILL RD
VAUGHN, MT 59487

Priority Date: JULY 10, 1910

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 306.00 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 18.00

Source Name: MERRILLS SPRINGS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWNW	2	8N	20E	GOLDEN VALLEY

Period of Diversion: MARCH 1 TO OCTOBER 1

Diversion Means: DIVERSION DAM

THE MEANS OF DIVERSION IS A TARP OR CANVAS.

Period of Use: MARCH 1 TO OCTOBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	8.50		N2SWNE	2	8N	20E	GOLDEN VALLEY
2	7.10		S2SWNW	2	8N	20E	GOLDEN VALLEY
3	2.40	4		2	8N	20E	GOLDEN VALLEY
Total:	<u>18.00</u>						

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 204290-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RANDY W WILSON
322 DRACUT HILL RD
VAUGHN, MT 59487

Priority Date: JUNE 1, 1910

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 1.19 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 31.30

Source Name: MERRILLS SPRINGS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESW	34	9N	20E	GOLDEN VALLEY

Period of Diversion: MARCH 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MARCH 1 TO OCTOBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.90		SWNESW	34	9N	20E	GOLDEN VALLEY
2	25.40		W2SW	34	9N	20E	GOLDEN VALLEY
Total:	31.30						